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Washington, D.C. 20044-7611

RE: U.S. v. Aeronca, Inc. et al./1:01 CV 00439

Introduction

Third, the allocation failed to consider the short amount of time that CII's material had been placed in the landfill, as compared to the long amount of time that certain more hazardous materials had been situated there.

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Ability to Pay

As we have discussed, CII is a small business, and its ability to pay is limited. Pursuant to your request, I have enclosed certain financial information, as well as other related information that CII understands you will treat with the utmost confidentiality.

As such, CII understands that only you and any necessary government employees will view the enclosed information. CII understands that other PRPs will not have access to either this letter or CII's financial information. Finally, I note that some of the materials you requested are in storage and have not yet been retrieved. I will pass that information along to you upon receipt.

As we have discussed, Clarke's Incinerators, Incorporated ("CII") has little ability to pay any amount remotely approaching the United States' demand of over \$700,000. As a preliminary matter, some understanding of CII's facility is necessary. CII's facilities consist of a small two-bay garage with three small offices situated above the garage. Mr. Clarke and his assistant operate from this building, and four or five persons are also employed as drivers and maintenance workers. The land on which the garage is located, which historically supported an operating incinerator and transfer station, consists of several feet of fly ash under which contaminated ground water flows. As such, it is clear that neither CII's building nor land possesses any significant value.

The contaminated status of the land also bears further explanation. CII's property has been the subject of ongoing state and federal ground water investigations for several years. CII has incurred significant expenses in determining the nature and extent of hazardous substances at the site. Through these studies, CII has determined that ground water at the site contains relatively high concentrations of certain chlorinated hazardous substances. At this time, U.S. EPA has asked CII to perform additional ground-water investigations to determine whether ground water below the shallow aquifer has been impacted by the releases of hazardous substances at the site. If so, then CII will face a ground-water remedial action, the cost of which will likely exceed the value of CII's assets, and potentially exceed the amount U.S. EPA is currently demanding for CII's limited involvement at the Skinner site.

Finally, CII's operations are quite tenuous. CII has temporary customers only. CII has no long-term contracts. Rather, CII only has short-term contracts to haul construction and demolition debris. In the Cincinnati area, approximately 45 companies operate within the same business and, in any economic downturn, activity substantially decreases. Moreover, in an attempt to survive, price-cutting is rampant, and many companies in the business fail. CII is not General Electric, Dow Chemical, or any other multinational goliath that is seeking contribution from CII. Rather, even in good economic times, which are now rapidly fading, CII must struggle to survive.

CII's lack of a stable financial foundation is reflected on the attached financial statements. Some of the important facts set forth on the financial statements are as follows:

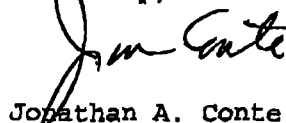
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1. CII keeps little cash on hand, typically on the order of \$25,000-50,000. The balance sheet for the fiscal year ending September 30, 2000 shows an aberrantly high amount because, as reflected in executive compensation, Mr. Clarke deferred a significant amount of his income. The payment of any amount beyond the cash typically kept on hand will impose a serious financial hardship on CII, as CII might not be able to pay its ordinary and necessary business expenses.
2. Obtaining a loan to pay any judgment is unreasonable and unrealistic. Other than the garage and land, CII has few assets of any value that are not ordinary and necessary. Thus, CII would be unable to sell any assets to raise funds to pay any response costs. Furthermore, given the environmental impairment of the land, and the decrepit nature of the garage, it is unlikely that CII would be able to borrow any funds using those assets as collateral. Finally, CII has no long-term contracts or predictable accounts receivable that could be used as collateral for any loan.
3. Finally, CII does not have sufficient cash flow to make any significant payments over time, let alone the exorbitant amount that the United States now demands. Again, setting aside the widespread economic downturn in the industrial sector, which has steadily worsened over the past year, and now threatens to infect the construction sector, CII faces the prospect of significant costs (costs that could far outstrip the value of CII's business) associated with the remedial action at the CII property. Furthermore, Mr. Clarke has deferred a significant amount of income - paying himself less than \$50,000 over the past two years. Mr. Clarke does not plan to continue to defer his income, and nothing in U.S. EPA's policy (or Superfund) requires a person to live near poverty in order to settle a CERCLA case.

Finally, on a separate note, Mr. Clarke is aware of no insurance policies or indemnification agreements that could cushion the fatal financial blow the government now seeks to impose on CII.

In sum, given the above analysis, CII has little money to offer the United States. However, CII would like to resolve the United States' claims and put this case behind it so that the corporation can deal with environmental problems at its own property. As such, in order to settle all environmental matters related to the Skinner Landfill, CII offers the United States \$30,000. This amount represents the maximum amount that CII can reasonably afford to part with and maintain a safe cushion to meet any unforeseen expenses associated with CII's business, as well as provide some limited insurance related to the potential remedial action at his property. Please let me know if your client is willing to accept this counteroffer.

Sincerely,


Jonathan A. Conte

JAC:mfm
CC: Marty Clarke